

ENTERED

August 26, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DANIEL AIELLO,

Plaintiff,

VS.

FRED SOLIS, *et al*,

Defendants.

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CIVIL ACTION NO. 2:20-CV-085

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court is Plaintiff's civil rights complaint (D.E. 1) for initial screening. On April 13, 2020, United States Magistrate Judge Jason B. Libby issued a Memorandum and Recommendation (M&R, D.E. 10), recommending that Plaintiff's action be dismissed without prejudice. Plaintiff timely filed his objections (D.E. 14) on April 24, 2020.

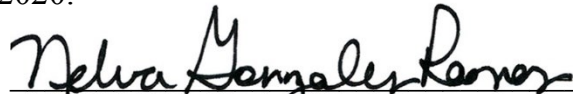
First, Plaintiff objects that the M&R does not correctly recite his complaints. However, the complaints, as restated in his objections, are the same as are set out in the M&R. The Court finds no error in understanding that Plaintiff is complaining that the decisions of the Board of Pardons and Paroles were incorrect due to members' conflicts of interest, relationship status with Plaintiff, and consideration of materials extraneous to the offense for which he was convicted—all contrary to what he understands to be proper rules and procedures governing the Parole Board. The M&R also understood Plaintiff to be challenging the Parole Board decision on the basis of placing him in double jeopardy

in violation of the due process provisions of the United States Constitution. The Court **OVERRULES** Plaintiff's objection to the M&R's analysis of his complaint.

The dispositive ruling recommended by the M&R is that Plaintiff challenges the fact or duration of his confinement, seeking speedier release. Such relief is available only after he exhausts his state law remedies, which he has not done. After exhausting his state law remedies, his action in this Court must be presented in the form of a petition for habeas corpus rather than a civil rights complaint. None of Plaintiff's objections address these procedural conclusions.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's M&R, as well as Plaintiff's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's M&R to which objections were specifically directed, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Plaintiff's civil rights complaint (D.E. 1) is **DISMISSED WITHOUT PREJUDICE**.

ORDERED this 26th day of August, 2020.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE